



**BOARD OF EQUALIZATION**

**BUSINESS TAXES COMMITTEE MEETING MINUTES**

HONORABLE DEAN F. ANDAL, COMMITTEE CHAIR

450 N STREET, SACRAMENTO, ROOM 121

MAY 11, 1999 — 10:00 A.M.

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**Agenda Item: Proposed Regulatory Changes to Address Needs of the Food Processing and Container Industry (Regulations 1589 and 1630)**

**Issue**

Should Sales and Use Tax Regulation 1589, *Containers and Labels*, and Regulation 1630, *Packers, Loaders, and Shippers* be amended as proposed by industry?

**Committee Discussion**

The committee was addressed by Mr. Jim Vangelos on behalf of CHEP, USA on the returnable container issue, and Mr. Brian Haddix of the California Grape & Tree Fruit League on the issue of preservatives. Staff prepared the attached summary of the action items to be considered for the proposed amendments to Regulation 1589 and Regulation 1630. Discussion on each item was as follows.

***Regulation 1589 and 1630***

Action 1, Consent

These were the items on which industry and staff agreed.

Action 2, Exempt Returnable Containers

Discussion centered on whether there is statutory authority to amend Regulation 1589 to exempt leased returnable containers. Industry contended the Board has the authority to amend the regulation as proposed, while staff contended legislative action was necessary. Assembly Bill 1210, Baca, was also discussed.

Action 3, Exempt Preservatives

Mr. Haddix demonstrated the type of items included in a non-returnable fruit container and explained the purpose each item serves.

**Committee Action/Recommendation**

The committee approved elements of industry's proposal and elements of staff's proposal, and directed staff to request authority to publish the amendments to Regulation 1589 and Regulation 1630. The committee's decisions on each of the action items were as follows:

***Regulation 1589 and Regulation 1630***

- Action 1: Approved the adoption of all items with which staff and industry were in agreement for both regulations, including the correction of a clerical error in consent item 3 under Regulation 1589.
- Action 2: Approved staff's recommendation for Regulation 1589.
- Action 3: Approved industry's proposal for Regulation 1630.

Approved: /s/ Dean F. And al  
HONORABLE DEAN F. ANDAL,  
Committee Chair

/s/ E.L. Sorensen, Jr.  
E. L. Sorensen, Jr., Executive Director

BOARD APPROVED  
at the 5/13/99 Board Meeting

/s/ Janice Masterton  
Janice Masterton, Chief  
Board Proceedings Division

**AGENDA – May 11, 1999 Business Taxes Committee Meeting**  
**Regulation 1589, Containers and Labels and Regulation 1630, Packers, Loaders, and Shippers**

<b>Action 1 – Consent</b>  Regulation 1589 Regulation 1630	Adopt amendments to the regulations agreed to by staff and industry.
<b>Action 2 – Exempt Returnable Containers</b>  Regulation 1589	Adopt either Industry’s language or staff’s recommendation to not amend the regulation.
<b>Action 3 – Exempt Preservatives</b>  Regulation 1630	Adopt either: 1) Industry’s proposal (drafted by staff to encompass industry’s proposed concept, Exhibit 2 pages 7 and 8)  2) Staff’s proposed language (Exhibit 2, page 7)
<b>Action 4</b>  Authorization to Publish	Direct the inclusion of the appropriate regulatory language as adopted in the above actions.

**AGENDA – May 11, 1999 Business Taxes Committee Meeting**  
**Regulation 1589, Containers and Labels and Regulation 1630, Packers, Loaders, and Shippers**

**ACTION 1 — Consent Items**

<b>Item</b>	<b>Comments</b>
<b>1.</b> Exhibit 1, page 1, “Definitions”	No change to existing language of Regulation 1589. Industry and staff agree that the issue of preservatives should be addressed in Regulation 1630.
<b>2.</b> Exhibit 1, page 1 and 2, “The term returnable containers...”	Accept Industry’s proposed language change.
<b>3.</b> Exhibit 1, page 2 through 4, “A container is not customarily returned...”	Accept Industry’s proposed language change with modifications proposed by staff.
<b>4.</b> Exhibit 1, page 4 through 5, “Examples of returnable...”	No change to the existing language of Regulation 1589. Industry and staff agree that the issue of preservatives should be addressed in Regulation 1630.
<b>5.</b> Exhibit 1, page 6, “Application of Tax”	No change to the existing language of Regulation 1589.
<b>6.</b> Exhibit 1, page 6, “Nonreturnable containers when sold...”	Accept Industry’s proposed language.
<b>7.</b> Exhibit 1, page 7 and 8 “Returnable containers when sold...”	Accept staff’s proposed language to clarify the application of tax.
<b>8.</b> Exhibit 1, page 8 “All containers when sold with...”	Accept industry’s proposed language.
<b>9.</b> Exhibit 2 page 1 to 4, “In General...”	No change to existing regulation (top of page 2 and top of page 3). Accept staff’s proposed language (top of page 4) to clarify that preservatives, when incorporated into the product being sold, are sales for resale and not subject to tax.
<b>10.</b> Exhibit 2 page 4 to 7, “Application of Tax”	No change to the existing language of Regulation 1630 (bottom of page 5). Accept staff’s proposed language to clarify the application of tax (top of page 7)

**AGENDA – May 11, 1999 Business Taxes Committee Meeting**  
**Regulation 1589, Containers and Labels and Regulation 1630, Packers, Loaders, and Shippers**

Action Number	Industry's Proposed Regulatory Language	Staff's Proposed Language and Comments
<p><b>ACTION 2 Returnable containers</b></p> <p>Exhibit 1, page 7.</p> <p>Exhibit 1, page 8 and 9</p>	<p><del>(B) Nonreturnable containers when sold without the contents to persons who place food products for human consumption in the containers for subsequent sale.</del></p> <p><u>(2) FOOD CONTAINERS. Tax does not apply to sales or lease as defined in Section 6006 of the Revenue and Taxation Code of containers used for food as defined in Sections 6358 and 6359, as follows:</u></p> <p><u>(A) Containers when sold or leased without the contents to persons who place food products for human consumption in the container for shipment and delivery and/or for subsequent sale.</u></p> <p><u>(B) Containers when sold or leased with food products for human consumption in the container.</u></p>	<p><i>Industry's proposal is to replace the strikethrough paragraph of the regulation with the "FOOD CONTAINERS" section. Industry believes the Board has statutory authority to make changes that would exempt the first sale or lease of a returnable container. Staff believes the proposed subdivision (b)(2) below would require a statutory change, and therefore recommends no change to the regulation.</i></p>

**AGENDA – May 11, 1999 Business Taxes Committee Meeting**  
**Regulation 1589, Containers and Labels and Regulation 1630, Packers, Loaders, and Shippers**

Action Number	Industry's Proposed Regulatory Language	Staff's Proposed Language and Comments
<p><b>ACTION 3, Preservatives</b></p> <p>Exhibit 2, page 7</p>	<p>3. Tax does not apply to the sale or purchase of <u>preservative products under the following two circumstances:</u></p> <p>a) <u>The preservative product is included in the shipping container of exempt food products when they serve a beneficial purpose in preserving the food products during shipment or storage. These include moisture-absorbing desiccants, gas-absorbing ethylene sachets, and gas emitting sulfur dioxide pads or similar products.</u></p>	<p><i>Staff recommended language to address concept proposed by industry.</i> Staff believes a statutory change is required to exempt preservatives that are not physically incorporated into the food product being sold or do not remain in the packaged food product until opened by the ultimate consumer. Staff does not agree with industry's proposal, but should the Board wish to include as exempt containers desiccants, ethylene sachets, sulfur dioxide pads, and products which serve the same purpose, it is suggested that staff's recommended language for industry's concept be adopted.</p>
<p><b>ACTION 4, Authorization to Publish, (whichever language is chosen)</b></p>		

(a) Definitions. The term “containers” as used herein means the articles in or on which tangible personal property is placed for shipment and delivery such as wrapping materials, bags, cans, twines, gummed tapes, barrels, boxes, bottles, drums, carboys, cartons, sacks, pallets, and materials from which such containers are manufactured.

The term “returnable containers” as used herein means containers of a kind customarily returned or resold by the buyers of the contents for re-use by the packers, bottlers or sellers of the commodities contained therein. A container, title to which is retained by the seller ~~of the contents~~, or for which a deposit is taken by such seller, is a returnable container.

A container used for shipment or delivery of food for human consumption is not customarily returned by the buyer when:

- 1) The container is sold together with the contents;
- 2) No deposit is charged on the container;
- 3) Title to the container is not retained;
- 4) There is no obligation to repurchase the container;
- 5) The container is of the type that is fungible; and
- 6) The container is repurchased without regard to whether it is the same container originally sold.

Example: A tomato paste processor purchased a new or used container. The processor fills the container with tomato paste or other processed food. The tomato paste, together with the container, is sold to a spaghetti sauce manufacturer. No deposit is charged on the container, title to the container is not retained, and there is no obligation to repurchase the container. The container is of a type that is fungible. The spaghetti sauce manufacturer sells the container to a warehouse or a food processor who in turn sells containers that may or may not include the original container to a tomato paste processor that may or may not be the original purchaser. This container is not customarily returned by the buyer.

Examples of returnable containers are: registered dairy products containers, steel drums, certain types of beer and soft drink bottles, wine barrels, chemical carboys, and gas cylinders.

All other containers are “nonreturnable containers.” Examples of nonreturnable containers are: wrapping and packing materials, paper bags, twine, cartons, cans, medicine and distilled spirits bottles.

The term "deposit" as used herein means an amount charged to the purchaser of the contents of the container with the understanding that such amount will be repaid when the container or a similar container is delivered to the seller. The term "deposit" as used herein does not include amounts representing redemption or recycling values of beverage containers pursuant to division 12.1 (commencing with Section 14500) of the Public Resources Code whether or not such amounts are separately stated to the purchaser of the contents of the container.

(b) Application of Tax.

(l) Containers. Tax does not apply to sales of:

(A) Nonreturnable containers when sold or leased without the contents to persons who place the contents in the container and sell the contents together with the container.

(B) Nonreturnable containers when sold without the contents to persons who place food products for human consumption in the containers for subsequent sale.

(C) Returnable containers when sold with the contents in connection with a retail sale of the contents, or when resold for refilling. In the case of a lease of a returnable container that is a continuing sale, the lessor's first lease of the container for filling is taxable for the full term of the lease or thirty (30) days whichever is greater. The lessor's subsequent lease of the container for refilling for sale with the contents is not taxable.

(D) All containers when sold or leased with the contents, if the sales price of the contents is not required to be included in the measure of the sales tax or the use tax.

Tax applies to all other sales of containers except sales for the purpose of resale to other sellers of containers who purchase them for resale without the contents.

Operative April 1, 1998, tax does not apply to the sale or to the storage, use, or other consumption of any container used to collect or store human whole blood, plasma, blood products, or blood derivatives held for medical purposes, including, but not limited to, blood collection units and blood pack units.

Deposits as defined herein are not taxable.



(2) Labels. Tax does not apply to sales of labels or nameplates if:

(A) The purchaser affixes them to property to be sold and sells them along with and as a part of such property, as, for example, sales of nameplates of manufacturers or producers which are permanently affixed to each unit of products sold, such as automobiles and machinery.

(B) The purchaser affixes them to nonreturnable containers of property to be sold, or to returnable containers of such property if a new label is affixed to the container each time it is refilled. Examples are sales of labels to be affixed to fruit boxes, cans, bottles and packing cases, to growers, packers, bottlers and others who place the contents in the containers.

(c) Particular Applications.

(l) Price Tags. Tax applies to sales of such items as price tags, shipping tags and advertising matter used in connection with the sale of property or enclosed with the property sold.

(2) Feed Analysis Tags. Tax does not apply to sales of feed analysis tags to be attached to containers of feeds and sold along with the container and contents.

(3) Feed Bags. Feed bags sold to feed dealers who place feed in the bags and sell the feed together with the bags are nonreturnable containers<sup>1</sup>, and the sale of such bags to feed dealers is not taxable. It is immaterial whether the bags are made of burlap, cotton, paper, or other material, or whether there is a brand name or dealer's name imprinted on the bags.

If, however, any feed dealer charges a deposit to customers to secure the return of the bags, or otherwise requires his customers to return the bags to him, the bags become returnable containers and tax applies to the sale of the bags to the feed dealer.

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<sup>1</sup> The conclusion that feed bags are nonreturnable containers resulted from a statewide survey made by the board with the cooperation of the California Grain and Feed Association, which showed that substantially less than 50 percent of the feed bags are returned to the feed dealers by their customers for re-use.

(4) Gift Wrapping. Tax applies to the entire charge for “gift wrapping”, (i.e., furnishing the materials and labor required to wrap an item for a customer so as to be suitable for use by him as a gift), whether or not the person who does the gift wrapping is the seller of the contents. If the person who does the gift wrapping is the seller of the contents, the gift wrapping is considered sold together with the contents, whether or not a separate charge is made for the gift wrapping. The person who does the gift wrapping may purchase the materials free of tax for resale.

However, tax does not apply to charges for gift wrapping exempt food products sold by the person who does the gift wrapping, unless the value of the gift wrapping exceeds the value of the food products.

Note:	Authority:	Section 7051, Revenue and Taxation Code.
	Reference:	Sections 6007, 6008, 6009, 6012, 6364, and 6364.5, Revenue and Taxation Code.

(a) In General - Definitions. Packers, loaders, and shippers (hereinafter collectively called "shippers") purchase tangible personal property to be used in conditioning the goods to be shipped and to preserve, protect, and contain the goods during transportation. Such property includes, but is not limited to, the following:

(1) Property Used to Condition the Goods for Shipment or to Preserve and Protect the Goods During Shipment.

bracing materials	gas (including dispensers)
car strips	ice and dry ice
cleaning compounds	miscellaneous preservatives
degreasing compounds	rust preventing compounds
derusting compounds	salt
dunnage or "loose" lumber	solvents
(except as otherwise	tarpaulin (weather protection)
specified in (2) below)	

(2) Property Used as Containers or as Parts of Containers of the Goods Shipped.

bags	gummed tape
barrels	kegs
bottles	lumber (including "loose" lumber used in the same manner and for the same purpose as pallets)
boxes	
cans	
carboys	pallets
cartons	sacks
crates	strapping
cylinders	twine
drums	wrapping paper
excelsior and other packing and crating material	

(3) Property that when physically incorporated in the final product being sold is a sale for resale.

wax and fungicide  
post harvest protective shields  
protective coatings  
salts, acids & caustics

(b) Application of Tax.

(1) Property Used to Condition, Preserve or Protect Goods During Shipment.

(A) General. Tax applies to sales to shippers of property used in conditioning the goods to be shipped, or to preserve and protect the goods during transportation. It is immaterial whether or not a separate charge or separate billing is made by the shipper for the particular item, that it may not be returned to or reused by the shipper, that the goods are shipped in interstate or foreign commerce, or that the shipper's contract is with the United States. The property is purchased by the shipper for a purpose other than resale, i.e., conditioning the goods, or preserving and protecting the goods during shipment. Thus, the sale to the shipper is a retail sale, even though he or she may not retain title to the property used by him or her.

(B) Ice,~~and~~ Carbon Dioxide and Preservatives.

1. Ice. The sale or use of ice or dry ice used in packing and shipping or transporting food products for human consumption is exempt from tax when the food products are shipped or transported in intrastate, interstate or foreign commerce by common carriers, contract carriers, or proprietary carriers.

2. Carbon Dioxide. Operative January 1, 1995, the sale or use of carbon dioxide used in packing and shipping or transporting fruits or vegetables for human consumption is exempt from tax when the fruits or vegetables are shipped or transported in intrastate, interstate, or foreign commerce by common carriers, contract carriers, or proprietary carriers provided the fruits or vegetables are not sold to the ultimate consumer in the package that contains the carbon dioxide.

3. Preservatives. Tax does not apply to the sale or purchase of preservative products under the following two circumstances:

(a) The preservative product is included in the shipping container of exempt food products when they serve a beneficial purpose in preserving the food products during shipment or storage. These include moisture-absorbing desiccants, gas-absorbing ethylene sachets, and gas emitting sulfur dioxide pads or similar products.

(b) The preservative product serves a beneficial purpose in preserving the food product and remains in the packaged food product until opened by the ultimate consumer. This includes nitrogen gas used to maintain an inert atmosphere in packaged food products which remains in the packaged food as a preservative until opened by the consumer; and moisture absorbing desiccants included in individual packages of beef jerky which remain sealed until opened by the consumer.

(2) Property Used as Containers or Parts of Containers of Goods Shipped.

(A) General. Tax applies to the sale or use of containers or container materials under the provisions of regulation 1589, "Containers and Labels", (18 CCR 1589). However, except as provided in paragraph (b)(2)(C), when the shipper is not the seller of the contents, the sale of the containers or container materials or parts to the shipper is a taxable retail sale unless the shipper expressly contracts with his or her customer for the sale to his or her customer of the container or container material, making a separate charge therefor, with title passing from the shipper to his or her customer before any use of the material is made, and without any understanding or trade custom that the property will be returned to the shipper for reuse. When all of these conditions exist, the shipper may purchase the property for resale by giving a resale certificate to the supplier of the property. The sale of the property by the shipper is taxable unless exempt as a sale to the United States, as a sale in interstate or foreign commerce, or exempt for any other reason.

(B) Carbon Dioxide. Operative January 1, 1995, the sale or use of nonreturnable container materials containing carbon dioxide atmosphere is exempt from the tax when used in packing and shipping or transporting fruits or vegetables in intrastate, interstate, or foreign commerce by common carriers, contract carriers, or proprietary carriers, whether or not the shipper is the seller of the fruits or vegetables.

(C) Packing Food Products for Human Consumption. Sales tax does not apply to sales of nonreturnable containers sold without the contents to packers who place food products for human consumption in the containers for subsequent sale.

Note: Authority: Section 7051, Revenue and Taxation Code.  
Reference: Sections 6007, 6359.7, 6359.8, and 6364, Revenue and Taxation Code.